1947 *Present:* **Canekeratne and Dias JJ.**

PERIES *et al.*, Appellants, *and* PERERA *et al.*, Respondents.

S. C. 75—D. C. (Inty.) Colombo, 10,322.

Will—Probate—Allegation of suspicious circumstances—Fraud—Burden of proof.

It is no part of the duty of Court to see that a testator makes a just distribution of his property, and so long as it is proved that the testator executed the will intending it to be his will the Court cannot refuse to grant probate on the ground of suspicious circumstances.

When there is a written memorandum in a will stating, among other things required by the statute, that the will had "been duly read over" this would be *prima facie* evidence that the will was read over before, and not after, the signature of the testator was placed.

Before fraud can be inferred in regard to the preparation of a will by the notary the fraudulent conduct must be clearly alleged and proved.

APPEAL from an order of the District Judge, Colombo.

One Edwin Perera left a will leaving his property to his sister Catherine, his adopted daughter Somawathie, to Newman who was one of his two sons, and to a servant girl. Reasons were given in the will for not making provisions for the wife and the other son, Walter. When application for probate was made by the executors, the widow and two sons of the deceased filed objections. The only issue framed at the inquiry was: "Is the will sought to be proved the act and deed of the deceased W. Don Edwin Perera?" The learned District Judge dismissed the application for probate. The petitioners thereupon appealed.

E. F. N. Gratiaen, K.C. (with him *H. W. Jayewardene*), for the petitioners, appellants.

F. A. Hayley, K.C. (with him *C. Thiagalingam*), for the objectors, respondents.

Cur. adv. vult.

September 25, 1947. CANEKERATNE J.—

This is an appeal by the petitioners from an order dismissing their application for probate of a will signed by one Edwin Perera. The will in question in this case is dated February 5, 1942. The testator died on January 1, 1943, leaving him surviving his widow, two sons, Walter and Newman and an adopted daughter Somawathie. The will was propounded for probate by the executors as an uncontested will, and on February 2, 1943, an order *nisi* was made for the grant of probate to them. Shortly afterwards on March 11, 1943, the heirs of the testator, the widow and two sons, presented a statement of objections, and prayed for the dismissal of the appellants' application. They gave four grounds. The widow had previously made an application for a grant of letters of administration in respect of the estate of the deceased. With that application she filed a motion R19 signed by the two sons, whereby they gave their consent to a grant of administration being made to her subject to these terms: (1) the widow is not entitled to any share of the immovable property and cash (moneys in bank, security moneys) left by the deceased but the same were to belong to the two sons in equal shares, (2) the contracts of the deceased were to be shared by the three, each to get one-third share.

The only issue framed at the inquiry was—is the will sought to be proved the act and deed of the deceased W. Don Edwin Perera? Counsel for the objectors stated that the grounds on which they say that the will was not the act and deed of the deceased were those stated in paras. 2 to 5 of the statement of objections. These grounds are as follows:—

(*a*) the will is not duly attested.
(*b*) the deceased was not of sound and disposing mind at the time of the execution of the alleged will.
(*c*) the will does not express the true intentions of the deceased.

One further point suggested by the objectors during the course of the inquiry appears to be that the signature on the will had been forged, and they called as a witness a person described as a handwriting expert. The trial Judge was not impressed by the evidence of this witness and he was unable to see any difference between the admitted signatures and that on the will. Mr. Hayley contends that the trial Judge has arrived at a conclusion adverse to the petitioners after seeing the witnesses, that the question involved in the case is one of fact, and that this Court has no right to interfere with the findings of fact: he refers in this connection to the decision in *Fradd v. Brown & Co. Ltd.*[1]. It was argued on the other side that the expression "questions of fact" comprises three distinct issues: What facts are proved? What are the proper inferences to be drawn from facts which are either proved or admitted? and what witnesses are to be believed? In regard to the first two questions no special sanctity attaches to the conclusion of a Court of first instance—*Perera v. Peiris*[2]. Mr. Gratiaen states also that the Judge has acted on what he considers are the probabilities and that this Court is in as good

[1] *(1918) 20 N. L. R. 282.* [2] *(1946) 47 N. L. R. 59.*

a position as the trial Judge in considering the probabilities of the case. He further contends that the trial Judge has come to a wrong conclusion on the facts due in great part to the long delay between the conclusion of the inquiry and the judgment. The question involved in the case relates more to the proper inferences to be drawn from the evidence.

The deceased was carrying on business as a contractor of labour to the Irrigation Department, to one or two Sanitary Boards and an Urban Council: he also supplied some materials to some local authorities. He had been ailing for some time suffering from high blood pressure and on January 31, 1942, at about 11.20 A.M. he was taken to the Private Hospital, Slave Island, Colombo, owned and managed by Dr. E. V. Ratnam. F. G. de Silva is a Proctor Notary who was about 12 years in practice at the time; he was well known to the deceased and had been doing work professionally for the deceased for several years.

The alleged will was executed about 1 P.M. of February 5 at the Hospital. Of the persons present on that occasion in the room, two persons gave evidence at the trial in support of the will. They heard what the testator said. They saw what he did. There could be no doubt that the testator was then perfectly competent. The other attesting witness was one D. Simon who was employed as an attendant at the Hospital at this time. There is, however, no evidence that he was improperly kept back—he had left the Hospital and his whereabouts are unknown. Two other persons were called in support of the will—Dr. E. V. Ratnam and Abeysekera, a clerk at the Kachcheri, Colombo. Dr. Ratnam saw the testator from the day he was admitted till long after the date in question. Abeyesekera saw the testator on business on February 4. He says that the testator then conversed with him very freely for about 5 minutes and talked very sensibly. He requested him to be a witness to his last will but he excused himself from acceding to this request.

Instructions for the will were, according to the notary, given on February 1. The testator sent for de Silva on that day. He went in the evening. Perera told him he wanted to make his will. The notary was between one and two hours at the Hospital before he could take his instructions. It is denied by the objectors that de Silva saw the testator on this day. The Judge states that he was not satisfied that instructions were given on this day; he seems to have been influenced by the testimony of a Buddhist priest called by the objectors. De Silva testified that he went to the Hospital on receipt of a message. After Perera spoke to him about making his will he remained there till Dr. Ratnam came and obtained his opinion about the condition of the patient; then as chanting of pirith had started he had to wait till the priest had finished it. De Silva is a member of the Roman Catholic faith and in all probability would not have been then very near the room. Dr. Ratnam corroborates de Silva about the conversation but he is unable to give the correct date. There can hardly be any doubt that de Silva saw the Doctor before the execution of the will.

The priest's version is this:—he went to see the deceased on three occasions, on February 3 between 7 and 9 P.M. (pages 212 and 220 of the

record), then on the morning of February 4, lastly on the evening of the same day. The fact that the priest did not see de Silva or any one in trousers at the time—if this incident took place on February 1—is not of very much importance. If he was chanting perith, it is not likely he, as a priest, would have paid any attention to persons outside the room, one stranger would not be distinguishable from the rest. The priest's evidence is that the day he went to see the testator was not February 1 but February 3. If de Silva was not delayed by the chanting of pirith, is it likely he would have mentioned an imaginary incident in examination-in-chief ?

De Silva does not seem to have thought that there was any immediate necessity for hurrying on the completion of the transaction. The instructions were given on February 1, but it was not until noon of February 4 that the draft was brought to the testator for his approval. Perera gave full directions for the disposal of his property after his death ; he also wanted to transfer an undivided ¼ share of a property in Barber Street to his sister Catherine, the first appellant, who was also present. The notary was for some time taking his instructions on a piece of paper. The will was drafted and typed by de Silva.

The will prepared by de Silva from the instructions which were given to him was brought to the testator on February 4. The draft (the protocol copy), it seems, was read over to the testator clause by clause by de Silva and its contents were explained to him. The evidence of Dr. Ratnam shows that de Silva spoke to him between 5 and 7 in the evening (p. 93), this could hardly have happened on February 4, for no one says that de Silva came on the evening of the 4th ; and corroboration, though slight, is afforded by the request made to Podisingho by the deceased to be a witness and the impression left on Abeyesekera's mind. If de Silva did not come on the 1st to see the deceased and take his instructions he must have come on the 2nd or 3rd.

Even if de Silva did not get instructions from the testator before the 4th, there can be no doubt that de Silva saw the deceased on February 4 ; he saw him at a time when clerk Abeyesekera was at the place and the Judge so finds. The deceased then discussed his will with de Silva and the date of execution of the will was fixed. It is clear that Perera was in a sufficiently rational state on February 4 and 5 to make a will. Dr. Ratnam's evidence makes this clear. The will was read over when brought to the testator for execution in the early afternoon of February 5. The two attesting witnesses were in the room at the time. After the will was read over and the clause of attestation had been filled the will was executed by the testator and the attesting witnesses signed it. One of the attesting witnesses was Podisingho. He was called as a witness at the trial, and seems to have given his evidence very fairly and the Judge apparently accepted his evidence. In cross-examination he says he was told on February 4 that Perera wanted him. He went up to Perera's bedside and asked him why he wanted him. Perera said there was a will of his to be signed next day, and he wanted the witness to sign. He was sent for on February 5, about 1 P.M. he went to the room, de Silva and the other witness were there, and the testator was seated at a table near the bed. Perera said this was his will, he added the words "for the

children", he said he was making a gift of a property to his sister who was present (there was a deed also). Perera put his signature to five documents. A last will attested by a notary must be in duplicate—the protocol which the notary keeps with his notarial documents and the original, a deed must be in triplicate—one part sent to the Registrar of Lands and kept in the Registry. He added that the notary explained the will and the deed to the testator only after the testator had signed the five documents. The notary duly preserved the duplicate copy of the will signed by the testator and witnesses, and this protocal was produced at the trial. There is a written memorandum stating, among other things required by the statute, that the will had "been duly read over", this would be *prima facie* evidence that it was read over before the signature was placed. The presumption is consistent with the manifest probabilities of the case. The testator was a shrewd man of business, he apparently was not ignorant of the manner of executing documents, it is very unlikely that he would have put his signature to the will or the deed before they were read over or explained to him. The matter is put thus—"It is right next to inquire whether it may reasonably be supposed as not unlikely, that the exact particulars and course of the transaction may not have accurately been remembered by the witnesses—they think that it may. One cannot avoid observing his station in society, his probable habits of life, his probable degree of education ; one cannot but be aware how very difficult it is for any man of whatever class (not gifted with uncommon faculties of mind) to remember with precision and clearness the exact particulars and order of a set of circumstances, not involving his own feelings or interests, at a distance of some months from their occurrence ; where no memorandum has been made, and where the circumstances are not of a kind or description, with which his own habits of life have rendered him conversant and familiar".—*Cooper v. Bockett* [1].

The supposed fact thus stated by the attendant is, in its nature, very improbable. "It is not according to the general notions or habits of mind of well informed persons, whether professional or unprofessional, to have a document which requires a party's signature, attested by a witness before its signature by the party and for the party to sign it afterwards—such a course is neither businesslike nor customary".—*Cooper v. Bockett* (*supra*). It is not consistent with probability that a lawyer who was fully aware of the legal formalities, on the occasion in question, could have acted or could have been capable of acting in such a manner.

The trial Judge has accepted the evidence of Dr. Ratnam, Abeyesekera the clerk and Podisingho. De Silva has been lacking in frankness on some points and his evidence on certain matters has not been accepted by the trial Judge. On these matters he has preferred the versions given by Walter or the widow. Obviously he was not prepared to accept everything these two said. It is difficult to follow the trial Judge on a few points : and for some of his findings he has given no reasons or inadequate reasons. On the day of the meeting de Silva produced the will from his custody and read and explained its contents

[1] (*1845*) *4 Moo. P. C. 419 at pp. 438, 439.*

to the widow and Walter. The testator, it seems, left the will and also his deeds with de Silva. Some time in May, 1942, at de Silva's request the testator removed his deeds but kept the will with de Silva. It is not uncommon for testators to leave their wills with their proctors if they have confidence in them and the latter are acting professionally for them. One cannot consider it at all unnatural that he did not keep the will in his custody, especially if, as is not improbable the testator did not want his wife to know that he had made a will and as he had at least a suspicion that his wife was not disinclined to meddle with his things if not remove them. (See P 17). It is worth remembering that if a last will is not forthcoming at the death of the testator, a presumption may be drawn that it had been revoked.

Newman was born on November 6, 1919, and was 22 years old at the time of the making of the will. He had been to a school to study English but had not made much progress and at this time he was at home doing nothing. The trial Judge applies the term wastrel to him: he was not without his faults. The elder son was employed in his father's business while the younger was utterly helpless and not fitted to earn his livelihood. The unfortunate position of Newman may well have evoked the compassion of the father as he was lying on his sick bed and may induce him to make fair provision for him.

What Newman is alleged to have done in August, 1942, is not a pretty story to begin life with and one might have expected that his anxiety would have been to live it down. But just after his father's death he negotiated, according to Walter, the sale of a lorry that belonged to the old man, to one Jayewardene and appropriated the money; he gave the purchaser a writing, as required by law, to effect a transfer of a motor vehicle, purporting to be signed by the deceased man and dated January 1, 1943. After this incident Newman was hardly in a position to deal with his brother and mother on equal terms when one comes to the transactions of January 11. An arrangement by which a son agrees to give some share of the estate to the mother is not one that can be pressed too far. The natural love and affection that exists between a son and a mother would be doubly increased by the piteous condition presented by the spectacle of a woman just bereaved of her husband telling her son what the effect of the will was. The Judge in attributing the inaction of Newman to knowledge on his part that there was something in the document which prevented him from putting it forward as genuinely the will of the testator was, in my opinion, conjecturing only.

The only date at which his testamentary intentions are to be regarded is, of course, the date on which the document was executed. At that time his estate was not a large one, the value would be about Rs. 12,000. He gives premises No. 10, the residing house, to the daughter Somawathie, also a sum of Rs. 1,000 out of money in the Bank to her—a sum of Rs. 100 to a servant girl. It is by no means improbable that the testator would give a small gift to a servant girl if she was one who was trustworthy. It would be the most natural thing to make some provision for the girl Somawathie. That he had an idea of making some provision for her may be gathered from what he told the police on July 7, 1941—there are

daughters—and it would have been surprising if he had forgotten or failed to make some provision for her. The old man and his wife adopted Somawathie when she was about 13 months old and she was brought up as one of their children. The deceased seems to have been very fond of this girl Somawathie, his affection being heightened by his idea—a not uncommon one in the case of men of this class—that she had in his view brought him luck. Reasons are given in the will for not making provision for the wife and for Walter. The first point that strikes one is—that the "ill-will" of the testator against either of these is not well founded, is immaterial. Even though one may consider the reasons given by him insufficient for the course he took it is no part of the duty of the Court to see that a testator makes a just distribution of his property, so long as he properly appreciates what he is doing—and if these reasons were actually furnished by the testator there is nothing further to be said on the matter. There is a danger of importing one's own views to transactions of this kind between these people. One is dealing not with a family of well founded repute and standing but with persons of a different class of life. Had the testator grounds for leading him to think that he had made provision for her? The idea that he would have to justify his action before a tribunal would hardly strike him. He says he has already purchased properties and invested moneys in the name of his wife. The evidence shows that the testator was the person who arranged the transfer of the two lands to the wife and the investment of moneys in her name. The widow says that it was her moneys that were so used. As regards the land No. 76 her version is that she withdrew Rs. 3,500 from the Savings Bank on March 17, 1938, and gave it to the testator. One should not forget that the testator is not in a position to give his own account of these transactions. But there are two documents which have a bearing on this point and which tend to corroborate the statement of the testator. On March 29, 1938, a cheque of his for Rs. 3,500 has been presented for payment and cashed (R 12). Then in P 17 he states on July 7, 1941, "I bought a grass field at Baseline Road No. 76 in her name for Rs. 3,500".

As regards Walter the reason he gives in the will is "I have also made provision to my son". The language used is different. From a change of language one should, in the absence of other considerations, infer a change of meaning. The evidence shows that the deceased exerted himself in arranging a suitable marriage for his son, the wife bringing a *dos* (or dowry) on her marriage. It is a very common thing for the parents of the bride to give a suitable dowry on her marriage, the amount of the dowry may depend on the position in life of the bridegroom.

The reasons which induced him not to give any property by his will to Walter are less easy to conjecture. It is possible, perhaps likely, that he thought he had arranged a good dowry for his son, and that he advanced him in life and he was thus in a position to look after himself. Though he left the business to Newman he appealed, the Judge states, to the Irrigation Engineer about December, 1942, to let Walter continue the business he had been doing with the Irrigation Department. In the first place this change of mind on his part applies only to one part of his business, contracts with one person. Next one can only indulge in

conjecture as regards the reasons that may induce a testator to change his mind as regards some particular item of his will.

The evidence of the proctor called by the objectors shows that the testator was seen by him twice after his illness in the house of Catherine, and that though there was a displeasure between the brother and sister this did not continue right through. Relations between the deceased and his sister were, the Judge states, not cordial : this seems a mistake, for had he correctly examined the evidence given by the proctor, he would have modified his view. As regards the transfer of the quarter share to Catherine, the evidence of Podisingho shows that the testator was making a gift to his sister. This statement shows in the first instance that his feelings towards her had undergone a great change compared to what they were when his mother's will was produced in Court. The property which he gave consisted of three tenements in one of which Catherine was living at the time and he may have thought of giving her his quarter share. It is not uncommon for persons desiring to make a gift of immovable property to put the transaction in the form of a deed of sale.

" It is clear, first, that the onus of proving a will lies upon the party propounding it and, secondly, that he must satisfy the conscience of the Court that the instrument so propounded is the last will of a fee and capable testator. To develop this last rule a little further, he must show that the testator knew and approved of the instrument as his testament and intended it to be such.

" In all cases the onus is imposed on the party propounding a will, it is in general discharged by proof of capacity, and the fact of execution from which the knowledge of and assent to the contents of the instrument are assumed.

" The question is, whether the testator knew the effect of the document he was signing. The circumstances attending the execution of the document may be such as to show that there is a suspicion attaching to the will, in which case it is the duty of the person propounding the will to remove that suspicion, this is done by showing that the testator knew the effect of the document he was signing "—*Barry v. Butlin* [1].

This was applied first to the case where a party makes or prepares a will under which he takes a benefit. " It is then a circumstance that ought generally to excite the suspicion of the Court and it calls upon it to be vigilant and jealous in examining the evidence in support of the instrument in favour of which it ought not to pronounce unless the suspicion is removed. The facts of a case may show whether the taking of a benefit is a suspicious circumstance or not. In some cases it may be of no weight at all, as where a man of one hundred thousand pounds gives a legacy of fifty pounds to his attorney. The quantum of the legacy and the proportion it bears to the property disposed of may show that there are suspicious circumstances. It does not amount to more than a circumstance of suspicion demanding the vigilant care and circumspection of the Court—*Barry v. Butlin* (*supra*).

The same rule was applied when the will is prepared on the instructions of the person taking large benefits under it. This was the state of the

[1] *(1838) 2 Moo. P. C. 480.*

law for some time. In 1893, the case of *Tyrrell v. Painton*[1] (the case on which the Judge bases his view of suspicion) came before the Courts. On November 7, 1892, the solicitor of the testatrix went to her house, and from her instructions prepared a fresh will by which she gave the bulk of her property to the plaintiff, her cousin, whom she appointed the sole executor. On the 9th T. P. a son of the defendant J.P., in whose favour she had made a will in 1884, appears to have found out that the will of the 7th had been made and what was its nature, and he brought to the testatrix another will which was in his handwriting, by which she purported to devise and bequeath away the whole of her property to the defendant J.P. absolutely, and to appoint as sole executor the defendant J.R.P., another son of J.P. There was evidence to show that upon November 7, and upon other days after the 9th, the testatrix had expressed continued hostility towards J.P. and satisfaction at having executed the will of the 7th under which he took nothing. The Doctor who was her medical attendant stated that upon November 9, the testatrix was in an exhausted condition and drowsy. She also complained of T.P. having brought a strange young man to her room. "Can any one doubt that the testatrix did not know what she was doing when she executed the will? It was executed under such suspicious circumstances that the Judge ought to have said—Do the propounders affirmatively establish that the testatrix knew what she was doing when she executed this will?" "On that day T.P. produces to the testatrix a will drawn up by himself, leaving out the disposition in favour of the plaintiff, and substituting one in favour of his father, J.P., and no one is present but himself and a young friend whom he called in to be an attesting witness. It would require much more than the evidence of T.P. and P.R. considering the grave suspicion surrounding the will of November 9, to satisfy me that Mrs. Bye knew what she was about when she signed the will." In the course of the judgment Lindley J. said "The rule in *Barry v. Butlin* extends to all cases in which circumstances exist which excite the suspicion of the Court; and wherever such circumstances exist, and whatever their nature may be it is for those who propound the will to remove such suspicion, and to prove affirmatively that the testatrix knew and approved of the contents of the document." One must look at the hypothesis of fact upon which the case was decided. The fact of the case show that the capacity of the testatrix was doubtful at the time of execution and the instrument was obtained by a party materially benefited.

In *Wilson v. Bassil*[2], the plaintiff, a niece of the testatrix, propounded a later will, dated May 28, 1900. The testatrix went to reside with the plaintiff in March, 1899, paying her twelve shillings a week for board. After the testatrix had an apoplectic seizure which paralysed her right side in May, 1900, the plaintiff's husband called on W (not a solicitor) and asked him to go and take instructions for a will. He took her instructions for a new will leaving everything to the plaintiff, who was present during the interview. On W's advice the plaintiff went to see a solicitor and asked him to prepare a will on the instructions given to W. The solicitor attended upon the testatrix whom he had never seen before, on May 28,

[1] *(1894) P. D. 151.* [2] *(1903) P. D. 239.*

1900, taking with him a fair copy will. He and her Doctor gave evidence that she knew perfectly well what she was doing. There was also other evidence to show that she was perfectly rational. The plaintiff did not, even when the defendant announced that he would proceed to prove the will of 1892 unless there were a later will, mention the will of 1900. On the evidence of the witnesses called by the plaintiff it was held that the suspicion attaching to the will was removed. The circumstances which excite the suspicion of the Court must primarily be circumstances existing at the time when the alleged will was executed, and have a direct bearing on the question whether the testator then knew and approved of its contents—*Davis v. Mayhew* [1].

Had the will been found in the possession of the testator at his death, it can hardly be disputed that on proof of the signature of the testator and of the attesting witnesses and of the notary, the presumption *omnia rite esse acta* would have applied, and the will would have been admitted to probate without any further evidence.

In the first place it is a fact beyond dispute that the deceased at all events meant that the will should be openly executed in the presence of at least one very respectable witness. He certainly applied to Abeyesekera for that purpose but unsuccessfully.

The Judge's view was that the deceased's mind was clear enough though he was ill and from the evidence given by Dr. Ratnam, Abeyesekera and Podisingho he came to the conclusion that the deceased was in a position to know exactly what he was doing on February 4 and 5.

The Judge had not had his mind clearly brought to the proved facts of the case. It is proved that the will has been read over to a capable testator and that he then signed it: it is proved that he executed the document intending it to be his will: on the evidence it must be held that he signed it after it was read over to him: the facts are very strong evidence, that the words found in the document P were known and approved by the testator. The Judge states that the testator used the words "the daruwanta", *i.e.,* he intended by the will he signed on February 5 to give his property to "the children". He was speaking to Podisingho about "the daruwanta". Is he likely to tell Podisingho what he was exactly doing by his will or was his desire merely to give him a general idea? One does not normally tell a witness who the beneficiaries under the will are. The word "daruwanta" may mean all the children or the children. It is an undisputed fact that Somawathie was treated and recognised as a child. If the testator intended by the words he used in his conversation to show he gave the property to two of the children the will as signed by him carries out his intentions. Has it been established that he intended to benefit all three children? If one tries to seek his intention to benefit all three from the words said to have been spoken by the deceased to Podisingho, one is left in complete uncertainty. It would be mere guessing to say that he intended to give benefits to all the three children. If he meant to give the property to all the three children, then the will as signed does not carry out his intentions exactly: the notary must then have deliberately omitted the name of one of the intended beneficiaries. This would be fraudulent

[1] *(1927) 96 L. J. P. 140 at p. 148.*

conduct on the part of the notary. There was no allegation that the will was obtained by fraud ; fraud must be alleged and proved and if the matter is left in doubt when all the evidence has been heard the party who ought to take on himself the burden must fail. As a corrective to the procedure adopted in this case, it may be useful to add the following passage—" I should be very sorry if the rule adopted by Lord Cairns in *Fulton v. Andrew* " (or I might add the rule referred to in *Tyrrell v. Painton*) " were used as a screen behind which one man was to be at liberty to charge another with fraud or dishonesty without assuming the responsibility of making that charge in plain terms. "—*Low v. Guthrie* '.

The appeal is allowed with costs in both Courts. Judgment to be entered in favour of the petitioners in terms of prayer (*a*) of the petition.

DIAS J.—I agree.

Appeal allowed.